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ABSTRACT

This policy paper outlines the impact that recent Title I legislation, which requires states to hold all students to the "same expectations," will have on state and local district evaluation plans, especially as regards students with disabilities. It notes the conflict between two educational goals: that of full inclusion of students with disabilities in all educational opportunities and that of the need to maintain educational standards. Issues in documenting cognitive (rather than physical) disabilities are raised and the possibilities that accommodations can grant unfair advantages to students so classified are considered. Relevant court decisions are reviewed as are requirements of the Americans with Disabilities Act and the Individuals with Disabilities Education Act. Policy implications suggest that requests for testing accommodations may not be automatically denied but must be evaluated carefully, and procedural safeguards must be followed at every step. The value of having detailed policies and written procedures is stressed. In the case of cognitive disabilities, recent confirmation can be required and any allowances granted should be specifically related to the disability and not affect test validity. Advantages and disadvantages of adding notations to test scores where accommodations have been granted are briefly considered. Care in balancing the policy goal of maximum participation by students with disabilities against the need to provide valid and interpretable student test scores is urged. (DB)

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By S. E. Phillips, Ph.D., J.D.
November, 1995

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All Students, Same Test, Same Standards: What the New Title I Legislation Will Mean for the Educational Assessment of Special Education Students

A Policy Paper by

S. E. Phillips, Ph.D., J.D.[1]

When the 103rd Congress overhauled the Elementary and Secondary Education Act last year, their new Title I legislation, in keeping with Goals 2000, called upon states to hold all students to the same expectations and to ensure they have equal educational opportunities. While those provisions reflect important social aims, they also emphasize a policy dilemma facing assessment administrators: How do we set standards that are high enough to be challenging for all students, yet not to high that they are impossible to attain for some? This paper will outline the impact this "same expectations" requirement will have on state and local district evaluation plans for Title I, and will provide suggestions for how these issues might be resolved.

At odds are two goals: the desire for full inclusion of the disabled in all educational opportunities and the need to maintain educational standards if a diploma is to be meaningful. By its very nature, testing draws distinctions between people; nevertheless, determining whether an individual has mastered skills and subject matter is important to colleges, employers, and others needing to make judgments about that person's suitability for a job or program. In applying the same assessments and standards to everyone, however, the issue arises: What kinds of allowances should be made for the disabled—oral questions, additional time, and the like—and which accommodations would compromise the meaning of the results (validity) of an exam?

These questions, raised anew by Title I, first became a critical issue as a result of the Americans with Disabilities Act (ADA) of 1990. The law, which took effect in 1992, imposed on private entities the same requirements for dealing with the disabled that public entities were bound to by Section 504 of the 1973 Rehabilitation Act; namely, removal of physical barriers and prohibition against discrimination in employment and education. Advocates for the disabled have seen this as a sweeping mandate for equity in all areas and have used it to bolster their demands for testing accommodations, not just for obvious physical impairments, but now for a host of cognitive handicaps as well.

[1] Special thanks to Mary Anneberry, freelance journalist, who worked with the author to use previously published works of the author to write this article.

Few would argue that a blind person shouldn't be allowed a Braille exam; the test will still measure the student's performance as intended. However, where cognitive handicaps such as dyslexia, attention-deficit disorders, and hyperactivity are concerned—not to mention a wide array of newly identified problems—the question of accommodations has become a good deal more complicated.

Physical Versus Cognitive Dichotomy

The decision to grant special testing conditions is further complicated by the nature of the disabilities. Allowances for most physical impairments haven't been that frequent or extensive to cause undue alarm and, as with the Braille example, generally do not compromise test validity. Cognitive disabilities, however, are more difficult to document, and the documentation itself may be questionable if provided by individuals who are lacking appropriate qualifications for certifying such impairments.

Furthermore, the validity of the test is more easily threatened. An assessment seeking to identify the rapidity with which students can solve problems has no meaning if the test takers are given as much time as they need. Assessments measuring reading skill are rendered invalid if students have the test read to them because they have a reading disability. And unflagged results of assessments given under such liberal circumstances may tell those needing to determine a person's abilities nothing about the very skills the exams were supposed to measure.

Accommodations can grant unfair advantages to students who are classified as "special education." A student identified as having an attention deficit disorder may demand to take an exam in a private room, perhaps with more breaks—maybe even over several days. If test administrators accede to those requests, that student receives advantages not afforded other test takers who might also benefit—say slow readers—but who are not labeled disabled. And, when the scores are released, the differences in administration conditions will be hidden if no distinctions are made between the student who received special allowances and the one who did not.

This kind of accommodation is no longer that unusual. In fact, requests like these are surfacing throughout the country. And sometimes going a step beyond. The student who fails a listening comprehension exam finds an expert who will document an "auditory processing deficit," and demands a modified retest in which the information is provided more slowly or in writing. A student failing a math test is identified as having dyscalculia—a problem handling numerical information—and insists on using a calculator when other students are denied this option. There are indications that suggest that applications for special education diagnosis go up when students fail a test. Once the student receives a special education diagnosis, he or she—who

has already been unsuccessful on the test given under routine administration conditions—receives another chance to take the exam under more favorable circumstances.

The accommodations being requested run the gamut and include readers, calculators, word processors with thesaurus and spellcheck, scribes, audiotapes, transcriptions of oral exams, extra rest periods, rescheduled testing, alternative locations, individualized examinations, a separate testing room, and substantial time extensions. Most states have some kind of policy for dealing with these situations, but decisions are oftentimes dependent upon the policy of the school or district the student attends. Clearly, it is time for test administrators and policymakers to formulate clearer policies and procedures for dealing with requests.

Legal Precedent

In developing policies, past court decisions can serve as a guiding light in this very murky arena. Three major federal statutes have specific provisions for the disabled: the Americans with Disabilities Act (1990); its predecessor, Section 504 of the Rehabilitation Act of 1973; and the Individuals with Disabilities Education Act (IDEA) of 1991. A disabled individual denied testing accommodations could challenge the decision under these laws or the constitutional due process protections of the Fourteenth Amendment.

In a landmark 1984 case, the 11th Circuit Court of Appeals ruled that a diploma is a property right subject to Fourteenth Amendment protection. According to the court, students are entitled to adequate notice of testing requirements, and diploma sanction examinations must have curricular validity. That case, Debra P. v. Turlington, did not specifically deal with disabled students, but testing of the handicapped was at issue in Brookhart v. Illinois State Board of Education, a 1983 case involving a minimum-competency test mandated by a local school district. Those who failed were granted certificates of high school completion instead of diplomas. Students with varying physical and cognitive disabilities who completed an Individualized Education Plan (IEP) but who didn't pass the graduation test challenged the requirement.

The 7th Circuit Court of Appeals ruled that disabled students could be required to pass a graduation test, but it said that parents and educators needed sufficient time to determine whether the tested skills should become part of a disabled student's IEP. The court also said that assessment administrators are required to provide accommodations for the disabled, but not if those concessions "substantially modified" the test.

The most salient challenge to an assessment administrator's refusal to alter standard testing procedures for a disabled student could be one of unlawful discrimination under the Americans with Disabilities Act (ADA)—formerly covered by Section 504. Because ADA only took effect in 1992, there is yet no

definitive case law, so its impact on assessment is still uncertain.

The wording of ADA relevant to assessment accommodations appears only cosmetically different from Section 504. Because of that, the assumption can be made that the courts will continue to follow interpretive precedents from Section 504 case law and regulations issued by the federal Office for Civil Rights (OCR). OCR regulations have required recipients of federal funds to make "reasonable accommodations to the known physical and mental limitations of an otherwise qualified handicapped applicant or employee" unless it can be demonstrated that the accommodation would impose "an undue hardship" on the operation of their programs. In a ruling in a Hawaii case, OCR also made clear its stance that Section 504 requires officials to consider individually each request for assessment accommodations from special education students.

The Americans with Disabilities Act states that "no qualified individual with a disability shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity. In Section 504, "qualified individual with a disability" was worded: "otherwise qualified handicapped individual." The Supreme Court has defined an "otherwise qualified handicapped individual" as "one who is able to meet all of a program's requirements in spite of his handicap."

In Southeastern Community College v. Davis, a 1979 case the Supreme Court ruled that the college was not required to modify its nursing program to exempt a profoundly hearing-impaired applicant from clinical training. The court agreed that the nursing student was not "otherwise qualified" for the program because her impairment would pose communication problems with patients and doctors, especially in a surgical environment where facial masks preclude lip reading.

The Davis case indicates that an educational institution is not required to lower or substantially modify its standards to accommodate a disabled student, and is not required to disregard the disability when determining a person's fitness for a particular program.

In Anderson v. Banks, a 1991 case involving mentally retarded Georgia students denied diplomas based on a graduation test, a federal court further clarified who might be considered "otherwise qualified." When the disability is extraneous to the skills tested, the court ruled, the person is otherwise qualified; but when the disability prevents the person from demonstrating the required skills, the person is not otherwise qualified. The court held that the school district should not be prevented from establishing academic standards for receipt of a diploma, and the fact that such standards had an adverse impact on the disabled did not make the test unlawful.

The Education for all Handicapped Children Act (EHA) enacted in 1975, guaranteeing disabled students a "free, appropriate public education," also has been used as a basis for challenging decisions by school districts not to grant diplomas to disabled students. Although revised in 1991 as IDEA, it contains essentially the same provisions, with additional procedural safeguards to ensure that appropriate educational services are provided.

Federal courts have held that EHA mandates specialized and individualized education, but that it does not guarantee any particular educational outcome. In Board of Education v. Rowley, the U.S. Supreme Court stated, "The intent of the Act was more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside."

Applying the Rowley standard in the Brookhart case, the 7th Circuit Court stated that denial of diplomas to disabled children who received the required services but were unable to pass a minimum competency test, did not constitute a denial of "free, appropriate public education." The court noted that because other graduation requirements were in place, the test was not the only criterion; therefore, it did not violate the provisions of EHA. Thus, federal case precedent involving EHA suggests that any challenge to a graduation test under IDEA is unlikely to succeed.

Policy Implications

Even though the newer national legislation is untested in federal courts, this much is known: In the past, judges have been deferential to academic decisions as long as proper procedural safeguards are followed. The courts have reinforced the quality issue; schools do not have to lower standards.

Despite such precedent, school districts and assessment administrators remain skittish about saying no to requests for special allowances. Just where do they draw the line?

Legal and measurement analyses both suggest similar conclusions regarding testing accommodations: They may not be automatically denied. Each request must be evaluated carefully before a decision is made, and a formal appeals process should be in place. Format accommodations that do not change the nature of the skill being measured should be granted, and requests that will invalidate the inference made from the test score should not be granted. Whatever course of action is taken, legal defensibility will be enhanced if there are detailed policies and written procedures for the consideration of all requests and appeals.

In cases involving cognitive disability, it is vitally important to obtain recent confirmation of learning disabilities and to screen for specific impairments. Accommodations

should only be made for appropriately documented disabilities, providing those allowances do not affect test validity. In addition, allowances granted should be specifically related to the documented disability.

Assessment developers may choose to eliminate extraneous skills from an exam so that accommodations would not be necessary. For instance, the time limit could be removed from tests whenever speed is not part of the skill being measured. Or an assessment could be designed to measure "communication skills" instead of specific reading or listening skills if the more specific skills of reading and listening are not relevant.

Some test administrators may consider adding notations to test scores in cases where accommodations have been granted; however, if a disability is then made identifiable, it could be considered a violation of privacy. When notations of departures from standard testing conditions are feasible and sensible, measurement specialists may decide to allow any student to request an accommodation without proving a disability, providing he or she gave written permission for disclosure of the altered conditions under which the test was taken. Self-selection of accommodations with informed disclosure would get measurement specialists out of the business of judging which disabling conditions should receive special consideration and whether the person making the request is actually disabled.

It is a good idea at the state or program level to collect data on accommodations for cognitive disabilities that could hurt test validity. Such data may help in gradual development of line-drawing policies in this area.

We must be careful not to go too far with requirements that unfairly disadvantage disabled students. But, to protect the rights of both those individuals and the public in a testing program, it will be necessary to balance the policy goal of maximum participation by the disabled against the need to provide valid and interpretable student test scores.

Resources

American with Disabilities Act (1990), Pub. L. No. 101-336, 42 U.S.C. § 12101 et seq. (1990).

Anderson v. Banks, 540 F. Supp. 472 (S.D. Fla. 1981), reh'g 540 F. Supp. 761 (S.D. Ga. 1982).

Board of Educ. v. Rowley, 458 U.S. 176 (1982).

Brookhart v. Illinois State Board of Education, 697 F.2d 179 (7th Cir. 1983).

Debra P. v. Turlington, 474 F. Supp. 244 (M.D. Fla, 1979), aff'd in part, rev'd in part, 644 F.2d 397 (5th Cir. 1981); on remand, 564 F. Supp. 177 (M.D. Fla. 1983), aff'd, 730 F.2d 1405 (11th Cir. 1984).

Education for All Handicapped Children Act, 20 U.S.C. § 1400 et. seq. (1975).

Individuals with Disabilities Education Act, Pub. L. No. 102-119, 20 U.S.C. § 1400 et seq. (1991).

Section 504 of the Rehabilitation Act, 29 U.S.C. § 701 et seq. (1973).

Southeastern Community College v. Davis, 442 U.S. 397 (1979).

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